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## II.—DIPLOMACY AND ARBITRATION

BY REAR-ADMIRAL A. T. MAHAN, U.S.N.

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Not long ago I was the guest of a large club in New York, devoted to economical subjects and interests, and was an interested listener to several speeches which found their common inspiration in the belief that arbitration could be substituted for war in all cases. It was apparent throughout that by arbitration was meant judicial arbitration, the decision of a court based upon a code of accepted law; not merely an arrangement of differences by adjustment or compromise contrived by practical men of affairs dealing with a difficult situation. Such adjustments have marked hitherto almost all treaties or settlements of any character between disputing nations, and they come under the head of Diplomacy. It appeared to be granted that such codified law does not exist yet, but its possibility in the future was assumed by the generality of the speakers. Law in place of war voiced the aspiration of one; but it is scarcely a misrepresentation to say that effectually law instead of Diplomacy was the desired end, for in diplomacy, in international negotiation, force underlies every contention as a possible final arbiter, and of force war is simply the ultimate expression.

The audience was necessarily sympathetic. The economist as such, and as a rule, cannot but hate war with a peculiar and specific hatred. Its occurrence throws his favorite system into disorder, dislocates the gearing; and the preparations for war are of the nature of so-called unproductive labor in various forms. Independent of the humanitarian evils of actual war which no soldier, not even the most zealous, will deny nor fail to deplore, preparation for war diverts an army of producers for a fixed period of their lives from productive labor, usually so styled, to military training, as well as another subordinate big detachment of work-

people to the manufacture of weapons of war. The creation of these, from an industrial point of view, is labor wasted, because spent in producing materials economically useless for purposes economically deplorable—at least to a first glance. It may be suggested here, however, as I have on other occasions, that the recognized financial priority and supremacy of Great Britain during the greater part of the last century was really the result of the armed power, the so-called unproductive labor, which through more than a century shielded her industries and commerce. From this point of view the debt incurred and the power expended was of the nature of an investment, in which, as in many other investments, the investor is content to wait through an unremunerative period for the great returns of a discernible future.

A listener who had reached his threescore and ten, whose life had been passed, and his position in life determined by devotion to pursuits so contrary to the mind of his fellow-diners—a military man, in short—could scarcely at the age named listen without a certain element of doubt, of lingering over the past; or without a certain repugnance and dissent to denunciations and prophecies which, if just, signified the passing away of a profession with which his life had been identified, and in the heroes of which he had had occasion to notice, and to know, the elements of greatness which exalted their calling. A member of the first Hague Conference and an interested observer of international affairs for years back, I have become conscious and seek to bear ever in mind that professional prepossession cannot but constitute in me a bias, against which I must be continually on guard, in viewing the origin and progress of the various attempts to substitute other processes for the attainment of the objects which hitherto have been effected largely by war; the study of which, with the consequent absorption of military sympathies, has been the principal engagement of my life experience.

Nevertheless, while thus keeping guard over the temper of my mind, and recognizing that to prefer a state of war to a state of peace would be a grievous twist of character, I could not but think that in the speeches to which I listened there were to be detected fallacies, partial points of view, ignoring of difficult factors. Fundamental among these was the looking upon war as a principal rather than an agent;

as a cause rather than an effect. There was no explicit recognition of the fact that force, under one form or another, underlies law itself; and that there are necessities which transcend law, a truth which found expression in the phrase once familiar to American ears—"a higher law." There was also the assumption that the individual man has surrendered unreservedly his freedom of action to the commands of law. I long ago pointed out that this is not true. The Fugitive Slave law afforded an instance. American citizens of the most law-abiding and peaceful character in other matters simply refused in this to subject their conscience to law. The instance is too recent to be dismissed as out of date, as some perhaps may feel can be done with the long history of religious persecution and of the martyrs to opinion who refused therein to subject their consciences to law. Armed resistance—that is, war—helped to win for mankind freedom of conscience. In many parts of the world, however, notably in the Mohammedan world, conversion to Christianity is even now more strenuously forbidden and on more extreme principles than it ever was under a Roman Emperor.

At the present moment our own United States refuses directly, as it has for generations refused, to acquiesce in a procedure which, according to the law of nations, is strictly legal. The refusal is not based on grounds of conscience, moral grounds, but on dictates of expediency; a justifiable motive, but one which rests on a distinctly lower plane. Sir Harry Johnston, a distinguished British administrator of long service in Africa, who may be better known to many Americans by his recent book, *The Negro in America*, contributed to the *Nineteenth Century*, in December and January last, two successive articles designed to explain to Englishmen the feelings of Germany. By this exhibition of "the other side" he avowedly hoped to forward, if possible, a good understanding, in place of the mutual suspicion now characterizing the attitude of the two nations, which finds expression in the generally known naval shipbuilding competition. The views he put forth depend upon personal discussions "with German officials, politicians, men of science, heads of industries, and of great commercial firms." In fact, his first article is couched in terms of German opinion expressing itself and, as such, is embraced in quotation marks.

In the course of the long exposition of the grievances felt by Germany and of the sense of being, as it were, "in Coventry," politically, occur these words:

"Why, Germans ask, in and as regards America, should everything be settled now practically by a joint understanding between Britain and the United States? Why was Denmark some time ago forbidden to sell one or more West-Indian Islands to the Germans as a depot for their fleet in the New World? France, Holland, and Denmark, as well as the British and American Empires, have harbors, coaling-stations, and colonies in the New World, which, especially in the tropical portions, serve as valuable rendezvous for their commerce; why should it be tacitly laid down that if Germany by purchase attempted to get a coaling-station, or a harbor of refuge, it would be equivalent to a *casus belli* with the Anglo-Saxon world?"

In his second article,\* elicited by the number of letters and remonstrances consequent upon the first, the writer endeavors to attenuate the impression produced by these words; but expressions once given public vogue are with difficulty recalled, and in this instance, while facts remain vague, there is left no room for doubt as to feelings:

"No German ever mentioned to me any project entertained by Germans for acquiring an island in the West Indies. It is true that some Germans, in their review of recent history, consider it to have been unfair and churlish on the part of the United States, and perhaps of Great Britain, to have opposed the project of the sale of a Danish island to Germany; but the subject was dismissed as one of only academic interest."

Whether this transaction of sale and purchase between Denmark and Germany was actually undertaken and forbidden, and, if so, by whom, I have no means of knowing; but, like every other American, I do know that it would have been contrary to the Monroe Doctrine, which is a distinct, continuous, and developing policy of the United States through now nearly three generations—since long before the present German Empire was constituted. But a policy, however wise or imperative to national interests, as I believe the Monroe Doctrine to have been in origin and in development, is not a law. Consider the proposition as formulated by Sir H. Johnston's article quoted. The sovereign and independent State of Denmark proposes to sell a piece of national property to the equally sovereign and independent Empire of Germany. What is there in international law to forbid? And if nothing, what is there to make the transaction

\* *Nineteenth Century*, January, 1911, p. 83.

illegal? In the existing condition of international law—by which an arbitral court must be governed—how is the suggested transfer to be condemned, or denied, if brought to a judicial settlement? Yet that which such a court must concede, so far as I can see, the United States refuses to concede, and in my own opinion very rightly.

This is one instance of the difficulty which I foresee, an insurmountable difficulty, to the substitution of judicial arbitration for diplomacy in all cases. The insistence of the United States, and the tacit, if unwilling, acquiescence of Germany, are both matters of policy. That of the United States is generally understood; that of Germany is not avowed, for it is not a general policy, only a particular abstinence. Germany has never explicitly recognized the Monroe Doctrine as an element in her general policy, as Great Britain very recently has done publicly, by the mouth of a responsible representative of her Government, Sir Edward Grey, the Secretary for Foreign Affairs in the present Cabinet. By transatlantic dispatch he is reported to have said in a public speech that the Monroe Doctrine, defined as prohibitory of future acquisition of American territory by a European state, is now "our policy"—the policy of Great Britain.\* Coming at the moment it has, the statement suggests the undercurrent of exchange of views which necessarily accompanied the negotiation of the pending Anglo-American Arbitration Treaty.

As far as has transpired, the official attitude of Germany toward the Monroe Doctrine leaves nothing to be desired by Americans, but she has never made to my knowledge a distinct pronouncement in its support such as the above. Speaking under correction, it appears to me that if the question posed in Sir H. Johnston's article were raised under an unqualified Treaty of Arbitration with Germany, and it went so before a court, the United States would lose its case, and must accept a German naval station in the waters of the Caribbean Sea, with all consequences.

\* The precise words of Sir E. Grey were: "The Americans have a policy associated with the name of Monroe the cardinal point of which is that no European or non-American nation should acquire fresh territory on the continent of America. If it be, as I think it must be, a postulate of any successful Arbitration Treaty of an extended kind that there should be no conflict, or possibility of conflict, between the national policies of the nations who are parties to it, this condition is assumed between us."—*The Spectator*, May 27th.

A conviction of similar character was expressed to me, when a delegate to the Hague Conference in 1899, by the principal representative of one of the smaller European Powers, with reference to our war with Spain in 1898. The person in question was a man of mature age who had passed his life in diplomacy; much of it in the United States, where he had married an American wife. He was then minister for his country to one of the principal European States, which may be taken to indicate his standing with his own government. Our demands upon Spain at that time and our course of action could not be justified in law, he thought, before an international court deciding between the two countries. Our demands were based upon "the abhorrent conditions which for more than three years had existed in the island of Cuba, so near our own borders." The incident of the *Maine* was mentioned, but it was supplementary and cumulative; cited as incidental to the general conditions, not as a primary cause of action. This is a fact well to be kept in mind at this particular moment. In other words, the domestic conditions of a certain integral portion of the Spanish Empire were given as the motive of the demand which led to war; precisely as the domestic institution of slavery, though not the immediate motive to the War of Secession, had led by an inevitable series of consequences to conditions which caused war.

International law concedes the legal right of any State to declare war, leaving it arbiter of its own action. It does not concede the like right of one independent State to intervene in the domestic concerns of another, except by permission or at the price of war. It is easy to see that such right of intervention would be contrary to the sovereignty of the State. Although self-government is not necessarily equivalent to independence,—Spain proposed autonomy for Cuba as an ultimate solution, but refused to entertain the proposition of independence,—independence includes self-government. Foreign intervention in domestic concerns impeaches both, whether such intervention be by another State or by an exterior tribunal. The demand of the United States that Spain should evacuate Cuba, leaving its people free and independent, could not therefore be justified by law if brought before a tribunal, unless Spain were willing to submit to the court the question of whether she should remain in Cuba or not; a precedent which, if established, might

carry us far, and bring into litigation much of the existing status of the world.

Yet, consider the moral grounds for forcible intervention; concerning which a distinguished British officer, who, it happens, by a rarity among British soldiers, is a strong Liberal in politics, said to me: "If the conditions of Cuba had existed as close to our doors as to those of the United States we would have interfered similarly." Since then—I like to vouch for my authorities—the officer in question has occupied continuously higher and higher positions in the civil and military administration of his government. An American in close contact with London feeling, official and other, affirmed at the time this general attitude. "The commonest phrase here is: 'I wish you would take Cuba at once. We wouldn't have stood it this long.'" Consider, I repeat, the conditions. In 1900 a very prominent gentleman, whose name, if mentioned, would be recognized by three-fourths of those who may read these lines and who had had close observation of Cuba during the revolt, said to me: "I asked Senator Proctor why, in the report of his visit to Cuba, he had not mentioned such-and-such things. The reply was: 'If I had told all I saw there would have been no holding our people back'"; and at the moment there were still hopes of a peaceful solution. I may add I have verified this recollection by a present reference to my informant.

If the hand of the United States had been stayed in this instance by an adverse arbitral decision upon legal grounds, upon what other legal grounds could the court have proceeded to right the misgovernment, to which was due the hopeless sufferings endured by the innocent Cuban population? Hopeless, I say, for it may be considered demonstrated that Spain with the best intentions has not the political aptitudes for well-governing remote dependencies. All that could come before an International Arbitral Court was the case between the United States and Spain. Spain's dealing with the revolt was a matter of domestic policy, not under the jurisdiction of a court instituted to decide international questions only. As it was, diplomacy settled that to which law was incompetent. It did so by using its last argument—force. It is out of place here to enlarge upon the benefits that American occupation, the result of war, conferred upon the ceded colonies of Spain. Sir H. Johnston, in one of the articles already cited, says, quite incidentally:

"To what degree have not the Santo Domingans, Porto Ricans, Cubans, and Filipinos profited through the intervention of the United States? I can testify from personal observation of the first three that the only adverb to be used in this connection is 'enormously.'"

Yet the intervention, if my diplomatic friend was right, could not have been permitted by a tribunal of arbitration. Such can decide only upon positive law, or upon fair rational inference from some existing law, or precedent, applied to a novel condition; in such case a legal inference rather than a positive law. There is as yet no proposition to constitute a tribunal empowered to authorize intervention in the domestic affairs of an independent State, or itself to exercise such intervention; but it seems probable that, in the borderland where international and domestic meet, there may be found the means of a transition to such interference. If so, this will trench heavily on that principle of nationality which has been the distinguishing element in modern European progress, since the centralizing conception of the Roman Empire, and the strong intervening hand of the Papal arbiter, lost their hold on European mankind.

The vista opened by such a prospect is indeed formidable, yet already there are premonitions of the attempt. At the International Peace Conference held in Stockholm in August last, a native Egyptian asked the Conference to express its sympathy with the Nationalist cause in Egypt and to direct that the Egyptian question should be placed on the programme of the next Conference. Instead of laying the proposal aside, as being under present conditions not an international question, the Congress decided to leave the matter to the Peace Bureau at Berne. A similar course would doubtless have been taken if a Filipino had requested a like interference for the Philippines; and the fact that a small but active minority in the United States would have sustained the proposition shows the greater chance there is that an Arbitral International Court might thus extend its jurisdiction by unconscious usurpation. It is easy to see that questions such as this approach a border line which might be insensibly crossed. There are questions of domestic regulation which affect foreign States, possibly unequally and invidiously. At present, the time-honored custom of nations is to respect the national sovereignty, confining objection to diplomatic remonstrance; or, if the worst come, resorting to war, which does not infringe national sovereignty. It seems

likely enough, however, that, once familiarized by habit with the idea of external intervention, such questions as the regulation of immigration, as a matter of intercourse between nations, might be brought before an arbitral court. Our Government has not thought necessary to ask the consent of other nations to fortifying the Panama Canal; but in influential quarters in Germany and Great Britain it has been suggested that to arbitrate this question, which affects "the vital interests of a great nation," would be highly edifying.

At the first Hague Conference there were audible whispers of two skeletons in the closet of the International Happy Family there assembled which might at any moment be revealed. As is the case with all such skeletons, unless they do appear, mention was reserved and vague; but there can be little doubt that they were there, though kept throughout decently curtained. They each illustrate questions in which legal decisions would be, probably, a far less happy solution than that of the rude hand of power. Of these one was the desire of the Papacy to be admitted to representation in the Conference; and a somewhat curious incident attending its close was the reading to the Conference an admonition addressed, if I rightly remember, to the Dutch Government, as the formal convener of the Conference, commenting on the absurdity of excluding from a peace conference the Power that had done so much to advance the cause of peace in the world.

The Conference being an assembly of secular States, not spiritual, the admission of a Papal representative could only be as that of a temporal Power, to which, it was said, Italy demurred; and naturally, because it would have recognized the temporal power which the Papacy still claimed as against the Italian occupation. Yet, why was the Papacy not a temporal Power, legally, in 1899? It claims to be so in its own right unsurrendered, despite the Italian occupation, which from the Papal point of view did not alter the legal fact; just as the United States dates its independence from its own declaration, not from recognition by Great Britain. The essence of a State—as the word shows—is that it exists by its own will. The only thing, as yet, that can reverse that will is the accepted result of force. International law accepts accomplished facts. The secular occupation of Rome, which the world at large, outside of the devout adherents of the Papacy, justifies as morally right,

is now legally complete and, therefore, is now such a fact; but, however morally right, it could never have been accomplished by arbitration. The Papacy would probably have refused to arbitrate, to acknowledge any superior judge in its own case; but, if brought to court at the first, the facts would have been that the Papacy then was a secular government of long standing, *de jure* and *de facto*, and no counsel of expediency could have swerved a just court from the decision that it had all the legal qualifications entitling it to continue. Italy would have been maimed of its capital.

The other skeleton was the dispute between the British Government and the Boer Republics. These, it was scarcely a secret, even open, were trying hard to get the matter before the Conference, in the shape probably of admitting delegates. This step would have acknowledged as unqualified an independence which in British affirmation was qualified, and at most amounted to the right of self-government. Sovereignty, which is the attribute of a State wholly independent, was in their case qualified by the unrelinquished suzerainty of Great Britain. If this were so, and after careful reading of the official papers at the time I think it certainly was, any recognition of the Republics, or cognizance of the dispute, would have been an intrusion into the domestic affairs of Great Britain, just as any question by another State of our administration of the Philippines would be. The Philippines, however useful our occupation may be to the inhabitants, are ours by right of conquest from Spain, by legal right; and our administration there is a purely domestic concern.

At the time, as I read the agreements between Great Britain and the Boer Republics by which their relations were then determined, Great Britain had not any right, and expressly disclaimed any right, to interfere with their self-government, including the question of the suffrage, on which most hinged; no right, that is, except the right of war, which as yet belongs to every State which feels it has wrongs to be redressed. If war were excluded, by consent to judicial arbitration, no redress was possible to the internal abuses of a government concerning which Mr. Bryce, an opponent of the war, wrote:

"President Krüger and his advisers committed the fatal mistake of trying to maintain a government which was at the same time undemocratic and incompetent. An exclusive government may be pardoned, if it is ef-

ficient; an inefficient government, if it rests upon the people. But a government which is both inefficient and exclusive incurs a weight of odium under which it must ultimately sink, and this was the kind of government which the Transvaal attempted to maintain."

Yet, despite this severe condemnation by an observer who at the worst was unbiased, a court could have given no redress, because the legal facts were against it; that is, the legal fact of the right to self-government conceded in a convention by Great Britain. The result, under the international law of then and now, was war; and consequent upon war such a political reconstitution as has replaced a congeries of rival and partly hostile communities, with strong racial oppositions, by a union of States. A South-African of English birth, who has resided there since the war and been active in politics, told me recently that in his judgment nothing but union could have saved another war. Union would have been impossible under the old conditions of Boer self-government in two States; and only force could have solved a difficulty to which existing international law was incompetent.

At the dinner in question much stress was laid by one of the speakers upon the opinion expressed to him by a well-known president of an American university, that no one of the wars in which the United States has been involved could not have been avoided. This is one of those remarks which says either too little or too much. If it is meant that in each instance, if both parties had been reasonable and righteous in their acts, there need not have been war, too little was said. No one will dispute the assertion so qualified. If it is meant that, things being as they actually were, war could have been avoided, too much is affirmed. Doubtless opinions may differ, and this may be considered matter of opinion, but as such it may be discussed.

Of the Mexican War I have no competent knowledge; but with the War of 1812, with the conflict of views and interests which led to the War of Secession, and to a somewhat less degree with the War with Spain, I am familiar. If it is meant that an arbitral court could have settled these disputes upon legal grounds, the reply is, that, in one of the two principal causes which led to the War of 1812, Great Britain, while maintaining the necessity and consequent propriety of its action, admitted it to be without sanction in law. An arbitral court could have affirmed no more. In 1861 a

like arbitration, whatever its result in conceding or denying the right of secession, would have maintained slavery in existence for generations longer, for the United States Government did not allege slavery as a justification of the war; a course which alienated many warm foreign sympathizers. Abolition was a war measure pure and simple. It could never have been a result of legal arbitration.

In the War with Spain there were no legal grounds upon which an arbitral court could have decreed the relinquishment by Spain of her colonies. War alone—actual or threatened—could have enforced the demand of the United States that Cuba be evacuated, and from war resulted the beneficent progresses that are known and noted. As a matter of private opinion, the members of a court might have considered it demonstrated that the time for Spain to go had fully come; but as a matter of legal decision there was then, and is now, no ground upon which to base a judicial sentence to that effect. Diplomacy failing, war alone was competent and war alone still would be. I am aware that persons in eminent position believed that with delay all the results of the war could have been secured from the Spanish Government without bloodshed. Granting that they were not mistaken, the difference of agency would have been that between war potential and war actual; in either case force, intimated by the United States, would have determined the issue. The ground of domestic bad government, however extreme, is not one for an international court; exactly as the ground of good government does not constitute the legal justification of the presence of Great Britain in Egypt or of the United States in the Philippines, however deplorable might be the results of withdrawal in either case.

A. T. MAHAN.